

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS FRITZ,  
Petitioner,

v.

SHERIFF LAURIE SMITH,  
Respondent.

Case No. [15-cv-03561-DMR](#) (PR)

**ORDER OF DISMISSAL WITHOUT  
PREJUDICE**

On July 24, 2015, Petitioner, who is in custody at the Elmwood Correctional Facility and proceeding *pro se*, filed a handwritten document entitled, “Writ of Habeas Corpus” with the court in the instant case. The Clerk of the Court opened the case as a habeas corpus action, and it has been assigned to the undersigned Magistrate Judge.

On August 7, 2015, the Clerk sent a notice to Petitioner informing him that his action could not go forward until he filed a fully completed petition on the proper habeas corpus petition form. Petitioner was informed that he had to do so within twenty-eight days or his action would be dismissed. The Clerk also sent Petitioner another notice directing him to either pay the filing fee or file a completed prisoner’s *in forma pauperis* (“IFP”) application within twenty-eight days or his action would be dismissed. The Clerk sent Petitioner a blank habeas corpus petition form as well as a blank IFP application.

On August 11, 2015, Petitioner filed another handwritten document entitled, “Amended Writ of Habeas Corpus.” Dkt. 5. However, Petitioner submitted his amended petition on lined paper instead of using the proper habeas corpus petition form. *See id.* Furthermore, Petitioner neither paid the requisite filing fee nor submitted a completed IFP application.

On the same date, Petitioner consented to magistrate judge jurisdiction. Dkt. 6.

On September 28, 2015, the Clerk sent a second notice to Petitioner again informing him that his action could not go forward until he filed his petition on the proper habeas corpus petition form, completed in full. The Clerk also sent a second notice informing him that he had neither

1 paid the filing fee nor submitted a completed IFP application. The Clerk sent Petitioner a blank  
 2 habeas corpus petition form as well as a blank IFP application and told him that he must  
 3 (1) submit his petition on the proper form and (2) either pay the filing fee or return a completed  
 4 IFP application within twenty-eight days or his action would be dismissed.

5 More than twenty-eight days have passed, and Petitioner has not filed his petition on the  
 6 proper form, paid the filing fee, returned the IFP application, or otherwise communicated with the  
 7 court.

8 IT IS HEREBY ORDERED THAT this action is DISMISSED WITHOUT PREJUDICE.<sup>1</sup>  
 9 The Clerk shall enter judgment, terminate all pending motions, and close the file.

10 IT IS SO ORDERED.

11 Dated: November 9, 2015



12 DONNA M. RYU  
 13 United States Magistrate Judge  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

25  
 26 <sup>1</sup> As mentioned above, Plaintiff has consented to magistrate judge jurisdiction. The undersigned  
 27 Magistrate Judge, then, has jurisdiction to dismiss this action, even though Defendants have not  
 28 been served or consented to magistrate jurisdiction. *Cf. Neals v. Norwood*, 59 F.3d 530, 532 (5th  
 Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison inmate's action under  
 42 U.S.C. § 1983 as frivolous without consent of defendants because defendants had not been  
 served yet and therefore were not parties).

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS FRITZ,  
Plaintiff,

v.

LAURIE SMITH,  
Defendant.

Case No. [4:15-cv-03561-DMR](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 9, 2015, I SERVED a true and correct copy(ies) of the Order of Dismissal Without Prejudice, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Thomas Fritz ID: ECJ562  
Booking 14024734  
701 S. Able St.  
Milpitas, CA 95035

Dated: November 9, 2015

Susan Y. Soong  
Clerk, United States District Court

By:   
Ivy Lerma Garcia, Deputy Clerk to the  
Honorable DONNA M. RYU